AJ ARIFFIN, YEO & HARPAL

v.

DR SHAHARUDDIN DATO' HJ AZIZ

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[ORIGINATING SUMMONS NO: R1-17-04-00]
9 MAY 2000

LEGAL PROFESSION: *Remuneration - Action for recovery of costs - Leave of court - Whether necessary - Action commenced one month after delivery of bill of costs - Whether leave required if action commenced before one month time period - Legal Profession Act 1976, s. 124(1)*

This was an *ex parte* application by a firm of advocates and solicitors ('the applicant') pursuant to s. 124(1) of the Legal Profession Act 1976 ('the Act') for leave to maintain its action or, alternatively, to file a fresh action against the respondent for the recovery of costs allegedly owed to it by the latter. The applicant had earlier acted for the respondent in two civil suits but subsequently withdrew itself when the respondent engaged new solicitors. A bill of costs together with a letter was later sent by post to the respondent. About three months thereafter, the applicant commenced an action against the respondent for the recovery of its costs.

Held:

[1] An advocate and solicitor need **not** obtain the leave of the court before commencing an action for the recovery of costs if such action is commenced one month **after** a bill of costs has been delivered or posted to the party to be charged. The leave of the court is required only if the action is commenced before the expiration of the said one month period. Consequently, the instant application for leave under s. 124(1) of the Act was unnecessary and misconceived.

[Application for leave dismissed.]

Case(s) referred to:
Kumar Jaspal Quah & Aishah (suing as a firm) v. Wembley Industries Holdings Bhd [1998] 2 CLJ 759 ***(not foll)***

Legislation referred to:
Legal Profession Act 1976, s. 124(1)

For the applicant - AS Gill; M/s AJ Ariffin, Yeo & Harpal

Reported by Alex KC Lee

JUDGMENT

KC Vohrah J:

In this *ex parte* application the applicants are a firm of advocates and solicitors.

The advocates and solicitors applied for leave of the High Court to maintain in the Kuala Lumpur Sessions Court an extant civil action, or, in the alternative for leave to file a fresh civil action against the respondent for costs allegedly owed by the respondent when the applicants represented the respondent in two civil suits.

They applied for leave under s. 124(1) of the Legal Profession Act 1976 which reads:

> 124(1) Except as authorised by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.
>
> (2) ...

The affidavit supporting the application shows that the applicants had acted for the respondent in the Kuala Lumpur High Court in Civil Suits No: S5-22-98-1998 and No: S-22-116-98 in May 1998. The applicants were subsequently informed that the respondent had engaged new solicitors and the applicants then withdrew themselves from further representing him. The applicants then sent a bill of costs with a letter dated 30 January 1998 to the respondent requesting for settlement of the bill. The letter was sent on 2 December 1998.

The respondent failed to pay the bill and three months after the letter and the bill were posted to the respondent, the applicants filed an application in the Kuala Lumpur Sessions Court, Civil Action No. 52-2991-99, to recover the amount stated in the bill of costs.

The applicants then filed this application before the High Court for leave.

In my view the application for leave before me under s. 124(1) is unnecessary and misconceived.

It is unfortunate that s. 124(1) comprises one long sentence, and as sometimes happens with long sentences, ambiguity is created in what the provision sets out to regulate.

The provision in sub-s. (1) gives the impression that an advocate and solicitor must first obtain leave from the High Court before suing for the recovery of any costs due to him from a person for services rendered to him. A closer reading of the sentence, however, shows that that impression is unjustified. What it provides is that (except as authorised by the Legal Profession Act 1976) no advocate and solicitor shall commence or maintain any action for the recovery of any costs due to him from a person **until** he has delivered or posted to that person or left with him a bill of costs for business done for him **and after the expiration of one month from the date of such service of the bill of costs on him.** The bill that is sent must comply with the terms spelt out in latter part of the sub-s. (1).

Leave, however, is needed if the advocate and solicitor chooses to commence or maintain any action before the expiry of the one month period which runs from the date of delivery or posting to the person or leaving him with the bill of costs for business done for him.

My attention has been drawn to *Kumar Japsal Quah & Aishah (suing as a firm) v. Wembley Industries Holdings Berhad* [1998] 2 CLJ 759; [1998] 2 AMR 1288 but with respect I am unable to agree with the interpretation placed on s. 124(1) by that case and I have to respectfully decline to follow it.

I found at the hearing that the application before me, on the facts set out earlier in my decision, was unnecessary and misconceived and I therefore dismissed it.